SHIBLEY RIGHTON LLP
Barristers and Solicitors

TORONTO OFFICE:
250 University Avenue, Suite 700, Toronto, Ontario, M5H 3E5
Main 416 214-5200 Toll free 1-877-214-5200
Facsimile 416 214-5400

WINDSOR OFFICE:
2510 Ouellette Avenue, Windsor, Ontario, N8X 1L4
Main 519 969-9844 Toll free 1-866-522-7988
Facsimile 519 969-8045

www.shibleyrighton.com

Please Reply to the TORONTO OFFICE

Jay Shepherd
Direct Line (416) 214-5224
Direct Fax (416) 214-5424
jay.shepherd@shibleyrighton.com

BY EMAIL

April 23, 2007
Our File No. 2060604

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Gas Incentive Regulation – EB-2006-0209

We are writing on behalf of our clients the School Energy Coalition to comment on the proposed process for establishing rates for Union Gas and Enbridge Gas Distribution for the period 2008 and beyond. We have had the opportunity to review the letter of Mr. Warren dated today, and while we did not join the group of parties presenting those submissions, we agree with many of their conclusions. We would also like to add some additional comments.

We begin by noting that the School Energy Coalition strongly opposes any use of "shortcuts" in place of proper substantive and procedural fairness in rate proceedings. To the extent that Board Staff, in the procedure they were proposing, intended to predetermine issues on which the Board has not heard evidence and has not made a proper adjudicative decision, we agree with Mr. Warren that this would not properly protect the ratepayers (nor, for that matter, either the regulated utilities or any other stakeholders). Where we perhaps differ is that it was not our understanding that Board Staff was proposing a process in which legitimate live issues would be treated as predetermined.

Of course, each rate application cannot start with a completely blank page, on which every single wheel has to be reinvented again. One of the whole purposes of having a subject-matter expert tribunal like the OEB is so that there resides in the tribunal a sophisticated experience in dealing with this type of adjudication. The Board doesn't have to learn afresh how to consider a rate application. This is not its first time doing it.

So, at the most obvious level the Board considers cost of service applications based on rules of practice, and standard filing guidelines, and those rules and guidelines have a significant impact on how the process will unfold. While applicants are still able to take a different approach in their applications, the structure provided by the pre-existing rules and guidelines is helpful to all parties and to the Board, so any deviation from it would have to be for good reason.

Against that background, we agree with Mr. Warren that the Board is perfectly free to tell the gas utilities that they think it is time for them to move to a multi-year incentive regulation regime for their rates. This does not mean that the utilities are required to file on that basis. If they apply on the basis of cost of service, in our view the Board must consider those applications on their merits. However, in this situation it appears that this issue doesn't arise, since the utilities are prepared to file on the basis of incentive regulation.

We also have no concern with the utilities' wish to have guidance in how they should file, whether from the Board, from Board Staff, or from anyone else.

The root of this is the interface between policy consultations and adjudicative proceedings. As lawyers, we get nervous if an adjudicator expresses opinions on policy issues that may be the subject of a subsequent adjudicative proceeding. Therefore, after the Board has completed the Natural Gas Forum process, and issued its report, there is an understandable nervousness that the conclusions of that report may be predetermined in the upcoming rate proceedings of the utility.

In our view, though, the solution is not to treat the Natural Gas Forum, or the recent Gas IR consultations by Board Staff, as if they didn't happen. There has been an extensive dialogue, in which utilities, ratepayers, other stakeholders, and the Board have been actively involved. A lot of people have increased their understanding of the issues through that dialogue.

We agree that the Board may not treat the conclusions of the Natural Gas Forum, or the conclusions, if any, contained in the final Board Staff report on Gas IR, as determinations of issues. The Board, in the person of the Board panel hearing the rate applications of the gas utilities, is obligated to look at all relevant issues with an open mind. On the other hand, we see no reason why the Natural Gas Forum report and background material, and the Board Staff report and background material, can't be available to the parties in the upcoming adjudicative proceeding as both context and "evidence". To us, this is no different than the extensive discussions, debates, and decisions on Gas DSM in the period prior to the summer of 2006. Many DSM issues had been considered, debated, even formally adjudicated, prior to the generic Gas DSM proceeding last summer. That context was there, existed, and informed the process. But the Board panel hearing the generic DSM case had the responsibility to maintain an open mind and look at those issues afresh.

Similarly, in the upcoming gas rate proceeding(s), we believe that all of the issues remain open, just as in any other rate case, but the dialogue that has taken place forms a useful (but not binding) context for tackling those issues.

In our view, therefore, the appropriate process is much as Mr. Warren has proposed:

1. The Board should commence a proceeding on its own motion to establish rates for the gas utilities for the period commencing January 1, 2008. The Notice of Proceeding should require each of Union Gas and Enbridge Gas Distribution to file an application for rates commencing on that date.

2. We believe that both the Natural Gas Forum Report, and the Board Staff Report on Incentive Regulation for Gas Utilities, should be filed in that proceeding as reference materials with respect to the dialogue to date. While we do not believe it is necessary for the Board to state that those documents are non-binding (the Board is not, in our view, legally able to make them binding for rate-making purposes except through an adjudicative process), we see no reason why the Board couldn't say they are non-binding, in order to ensure that that there is no ambiguity about their status.

3. Once the utilities have filed their applications, on whatever basis they have selected, an issues list should be prepared. From our comments above, it should be clear that we think issues such as earnings-sharing, price cap vs. revenue cap, multi-year forward test year approach, Z-factors, off ramps, IR term, and other

issues that have been the subject of comments in the context documents are still fully live issues in this rate proceeding. While School Energy Coalition generally agrees with many of the conclusions of the Natural Gas Forum on these issues, we do not believe that those conclusions should influence the decision of the panel in this rate proceeding. The Board panel should decide those issues, and set rates, based on the evidence before it.

4. It is in this context that the PEG report should be filed. The report speaks to a number of the issues that will be on the issues list, and represents one expert's opinion on those issues. No party to the proceeding has to sponsor it, or stand behind it. The expert will have to come and defend the conclusions via interrogatories and oral evidence, and the Board and parties will be informed by that expert's input. Who paid the expert is, in this situation, not really important. We also agree with Board staff that it should be filed prior to the utility applications. That way, if either utility wants to rely on some of the PEG conclusions rather than retain their own consultants, the efficiency of the process will be enhanced.

5. After an appropriate interrogatory process (on the utility applications and the PEG report, but not, of course, on the context documents), intervenors should file their evidence, and there should be the normal further steps to a hearing. We would expect that the hearing will be a combined one, in the interests of regulatory efficiency, unless there is some demonstrable reason why all or part of it should be separate as between Union and Enbridge. As long as both utilities file on an IR basis, many of the issues will be common, so it is more efficient to hear them together. Obviously if one filed on a cost of service basis, then the overlap may be much less.

It appears to us that the above steps are consistent with both the Board Staff process proposal, and the comments of Mr. Warren on behalf of several ratepayer groups.

All of which is respectfully submitted.

Yours very truly,
SHIBLEY RIGHTON LLP

Jay Shepherd

cc: Patrick Hoey, Enbridge Gas Distribution (email)
Mike Packer, Union Gas (email)
Marika Hare, Ontario Energy Board (email)
Laurie Klein, Ontario Energy Board (email)
Interested Parties (email)